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Mucip, Inc./Tel Vida Connections and Margarita Carson and Esther Jean Bart. Cases 2-CA-35408-1 and 2-CA-35424-1

December 29, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS
LIEBMAN AND WALSH

The General Counsel seeks a default judgment¹ in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and an amended charge filed on April 3, 10, and 11, 2003, the General Counsel issued the consolidated complaint on August 29, 2003, against Mucip, Inc./Tel Vida Connections, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On November 24, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On December 5, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was filed by September 12, 2003, all the allegations in the consolidated complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 3, 2003, notified the Respondent that unless an answer was received by November 10, 2003, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

¹ The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with its main office in New York, New York, and with facilities in the Bronx, Queens, and Brooklyn, has been engaged in the business of cable installation and service. Annually, the Respondent, in the course and conduct of its business operations described above, purchases and receives at its New York facilities products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 3, International Brotherhood of Electrical Workers, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent acting on its behalf:

Paul Mucip	President
Benjamin B. Culp, Jr.	Director of Operations
Alphie Coleman	General Manager

In about late 2002 and early 2003, administrative assistants employed by Respondent, including Margarita Carson and Esther Jean Bart, sought union representation.

About March 21, 2003, the Respondent terminated employees Carson and Bart, and, since about the same date, has failed and refused to reinstate or offer to reinstate them to their former positions of employment.

The Respondent engaged in the foregoing conduct because Carson and Bart sought union representation and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has discriminated in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having

found that the Respondent unlawfully terminated and refused to reinstate employees Margarita Carson and Esther Jean Bart, we shall order the Respondent to offer them full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings or other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful terminations and the failure to reinstate Carson and Bart, and to notify them in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Mucip, Inc./Tel Vida Connections, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating, failing to reinstate, or otherwise discriminating against any employees because they sought to be represented by Local 3, International Brotherhood of Electrical Workers, AFL-CIO, or any other union, and engaged in concerted activities, or to discourage employees from engaging in these activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the date of this Order, offer Margarita Carson and Esther Jean Bart full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make whole Margarita Carson and Esther Jean Bart for any loss of earnings or other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful terminations and the failure to reinstate Margarita Carson and Esther Jean Bart, and within 3 days thereafter, notify them in writing that this has been done and that the terminations and the failure to reinstate will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility(ies) involved in this proceeding,² copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 21, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., December 29, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² It is unclear from the record which of Respondent's New York City facilities are involved in this proceeding. We shall leave this issue to compliance.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT terminate, fail to reinstate, or otherwise discriminate against our employees because they sought to be represented by Local 3, International Brotherhood of Electrical Workers, AFL-CIO, or any other union, and engaged in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Margarita Carson and Esther Jean Bart full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Margarita Carson and Esther Jean Bart for any loss of earnings or other benefits suffered as a result of the discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful terminations and the failure to reinstate Margarita Carson and Esther Jean Bart, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the terminations and the failure to reinstate will not be used against them in any way.

MUCIP, INC./TEL VIDA CONNECTIONS